



" 3 0 SEP 2008

TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY UT 84110

In re Application of:	:
JONES, David, H., A., et al.	: DECISION ON PETITION
Application No. 10/644,256	: UNDER 37 CFR 1.55(c)
Filed: August 20, 2003	:
Attorney Docket No. 2578-6077US	:

This is a decision on the "Petition under 37 CFR 1.55(c) For Acceptance Of An Unintentionally Delayed Priority Claim" filed June 04, 2007.

For the reasons discussed below, the petition is **DISMISSED**.

The present petition is not sufficiently clear as to number and type of priority claims which applicant is seeking to add. For example, the conclusion of the petition refers only to granting a "right of priority to PCT International Patent Application No. PCT/EP2003/007690." However, the body of the petition refers to three additional benefit claims not referenced in the conclusion. Moreover, the petition is filed under 37 CFR 1.55(c), which is only applicable to delayed claims for foreign priority. However, the amendment and declaration filed 20 November 2006 include an added claim of domestic priority under 35 U.S.C. 120 directed to international application PCT/EP2003/007690 and an added claim of benefit under to U.S. provisional application 60/397,066. 37 CFR 1.78(a)(3) and (a)(6), not 37 CFR 1.55(c), apply to the addition of such claims.

In addition, while a benefit claim directed to a prior-filed international application can under certain circumstances be made as a domestic priority claim under either 35 U.S.C. 120 or as a foreign priority claim under 35 U.S.C. 365(a), an applicant must be clear as to which claim is being made and satisfy the applicable requirements with respect to such a claim. Here, as discussed above, applicant has inconsistently petitioned under 37 CFR 1.55(c), the regulation applicable to foreign priority claims, for the addition of a domestic benefit claim ("continuation-in-part") directed to PCT/EP2003/007690. In addition, from the form of the benefit claim contained in the amended specification, applicant appears to seek the addition of a foreign benefit claim to PCT/EP03/50201. However, the declaration filed 20 November 2006 lists this claim as a domestic priority claim (a proper claim of foreign priority under 35 U.S.C. 365(a) must be made set forth in the declaration or in an ADS). Applicant must clarify the form of benefit claim directed to each of the two international applications and submit the materials required to comply with the requirements of such claims before benefit claims to such applications can be added to the present application.

With respect to the European patent application listed on the declaration, applicants failure to specifically request addition of such claim in the conclusion of the present petition makes it unclear whether applicant is specifically seeking to add such claim to the application.

Finally, it is noted that any petition under 37 CFR 1.55(c), 1.78(a)(3), and 1.78(a)(6) requires a statement that the entire delay from the date the claims were due until the date the claims were filed was unintentional. The present petition includes a statement that: "Pursuant to 37 CFR 1.55(c)(3), applicants submit that: 'the entire delay between the date the claim was due under paragraph a(1) of [Rule 55] and the date claimed [sic] was filed was unintentional.'" This statement is ambiguous as worded, and it does not refer to the delay between the date any additional claims under 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) were due and when such claims were filed (referring only to the due date under 37 CFR 1.55(a)(1)).

Applicants must file a revised petition that: (1) clearly identifies the regulations under which it is filed, for example, 37 CFR 1.55(c), 37 CFR 1.78(a)(3), and 37 CFR 1.78(a)(6); (2) expressly identifies the specific delayed benefit claims which applicant seeks to add to the application and the form of such claims (domestic or foreign); (3) complies with all the requirements for adding such claims (e.g., with respect to a foreign priority claim, includes such claim in a revised declaration or ADS; with respect to a domestic benefit claim, includes a proper reference to such application in the first sentence of the specification or in an ADS); and (4) includes a revised statement that is unambiguous and clearly indicates that the entire delay between the date on which the benefit claims were due under 37 CFR 1.78(a)(2)(ii), 1.78(a)(5)(ii), and 1.55(a)(1), and the date such claims were filed, was unintentional.

Further correspondence with respect to this matter should be addressed as follows. No additional petition fee is required:

By mail: Mail Stop PCT Legal Administration
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop PCT Legal Administration
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of PCT Legal Administration

Any questions concerning this matter may be directed to Richard M. Ross at (571) 272-3296.

A handwritten signature in black ink, appearing to read "Boris Milef". The signature is fluid and cursive, with the first name "Boris" and last name "Milef" clearly distinguishable.

Boris Milef
Legal Examiner
Office of Petitions and PCT Legal Administration